

# **EXHIBIT 1**

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT		SUMMONS	For Court Use Only
DuPage	COUNTY		
<b>Instructions ▾</b> Enter above the county name where the case was filed.		BRADLEY BENES, individually, and on behalf of all others similarly situated <b>Plaintiff / Petitioner (First, middle, last name)</b>  v.  <b>CENLAR FSB</b> <b>Defendant / Respondent (First, middle, last name)</b>	
Enter your name as Plaintiff/Petitioner.  Enter the names of all people you are suing as Defendants/ Respondents.  Enter the Case Number given by the Circuit Clerk.		<input type="checkbox"/> <b>Alias Summons</b> (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)  2022MR000267 <b>Case Number</b>	

<b>IMPORTANT INFORMATION:</b>  There may be court fees to start or respond to a case. If you are unable to pay your court fees, you can apply for a fee waiver. You can find the fee waiver application at: <a href="http://illinoiscourts.gov/documents-and-forms/approved-forms/">illinoiscourts.gov/documents-and-forms/approved-forms/</a> .  E-filing is now mandatory with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <a href="http://efile.illinoiscourts.gov/service-providers.htm">efile.illinoiscourts.gov/service-providers.htm</a> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <a href="http://illinoiscourts.gov/faq/gethelp.asp">illinoiscourts.gov/faq/gethelp.asp</a> or talk with your local circuit clerk's office. If you cannot e-file, you may be able to get an exemption that allows you to file in-person or by mail. Ask your circuit clerk for more information or visit <a href="http://illinoislegalaid.org">illinoislegalaid.org</a> .  Call or text Illinois Court Help at 833-411-1121 for information about how to go to court including how to fill out and file forms. You can also get free legal information and legal referrals at <a href="http://illinoislegalaid.org">illinoislegalaid.org</a> .	
<b>Plaintiff/Petitioner:</b>  Do not use this form in an eviction, small claims, detinue, divorce, or replevin case. Use the <i>Eviction Summons, Small Claims Summons, or Summons Petition for Dissolution of Marriage / Civil Union</i> available at <a href="http://illinoiscourts.gov/documents-and-forms/approved-forms">illinoiscourts.gov/documents-and-forms/approved-forms</a> . If your case is a detinue or replevin, visit <a href="http://illinoislegalaid.org">illinoislegalaid.org</a> for help.  If you are suing more than 1 Defendant/Respondent, fill out a <i>Summons</i> form for each Defendant/Respondent.	

<b>In 1a</b> , enter the name and address of a Defendant/ Respondent. If you are serving a Registered Agent, include the Registered Agent's name and address here.	<b>1. Defendant/Respondent's address and service information:</b> a. Defendant/Respondent's primary address/information for service: Name (First, Middle, Last): <u>CENLAR FSB</u> Registered Agent's name, if any: _____ Street Address, Unit #: <u>425 Phillips Blvd</u> City, State, ZIP: <u>Ewing, NJ 08618-1430</u> Telephone: <u>(609) 883-3900</u> Email: _____
<b>In 1b</b> , enter a second address for Defendant/ Respondent, if you have one.	b. If you have more than one address where Defendant/Respondent might be found, list that here: Name (First, Middle, Last): _____ Street Address, Unit #: _____ City, State, ZIP: _____ Telephone: _____ Email: _____
<b>In 1c</b> , check how you are sending your documents to Defendant/ Respondent.	c. Method of service on Defendant/Respondent: <input type="checkbox"/> Sheriff <input type="checkbox"/> Sheriff outside Illinois: _____ <input checked="" type="checkbox"/> Special process server <input type="checkbox"/> Licensed private detective County & State: _____

In 2, enter the amount of money owed to you.

In 3, enter your complete address, telephone number, and email address, if you have one.

**2. Information about the lawsuit:**

Amount claimed: \$ \_\_\_\_\_

**3. Contact information for the Plaintiff/Petitioner:**

Name (First, Middle, Last): Mohammed O. Badwan DuPage Attorney # 224408 clk

Street Address, Unit #: 2500 S. Highland Ave., Ste. 200

City, State, ZIP: Lombard, Illinois 60148

Telephone: (630) 575-8181 Email: pleadings@sulaimanlaw.com

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

**Important information for the person getting this form**

You have been sued. Read all of the documents attached to this *Summons*. To participate in the case, you must follow the instructions listed below. If you do not, the court may decide the case without hearing from you and you could lose the case. *Appearance* and *Answer/Response* forms can be found at: [illinoiscourts.gov/documents-and-forms/approved-forms/](http://illinoiscourts.gov/documents-and-forms/approved-forms/).

Check 4a or 4b. If Defendant/Respondent only needs to file an *Appearance* and *Answer/Response* within 30 days, check box 4a. Otherwise, if the clerk gives you a court date, check box 4b.

In 4a, fill out the address of the court building where the Defendant may file or e-file their *Appearance* and *Answer/ Response*.

In 4b, fill out:  

- The court date and time the clerk gave you.
- The courtroom and address of the court building.
- The call-in or video information for remote appearances (if applicable).
- The clerk's phone number and website. All of this information is available from the Circuit Clerk.

**4. Instructions for person receiving this *Summons* (Defendant):**

a. To respond to this *Summons*, you must file *Appearance* and *Answer/Response* forms with the court within 30 days after you have been served (*not counting the day of service*) by e-filing or at:

Address: 505 N County Farm Rd

City, State, ZIP: Wheaton, IL 60187

b. Attend court:

On: \_\_\_\_\_ at \_\_\_\_\_  a.m.  p.m. in \_\_\_\_\_  
 Date \_\_\_\_\_ Time \_\_\_\_\_ Courtroom \_\_\_\_\_

**In-person at:**

Courthouse Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

OR

**Remotely** (You may be able to attend this court date by phone or video conference.

This is called a "Remote Appearance"):

By telephone: \_\_\_\_\_

*Call-in number for telephone remote appearance*

By video conference: \_\_\_\_\_

*Video conference website*

*Video conference log-in information (meeting ID, password, etc.)*

Call the Circuit Clerk at: (630) 407-8700 or visit their website

*Circuit Clerk's phone number*

at: <https://www.dupagecounty.gov/courtclerk/> to find out more about how to do this.  
*Website*

5/6/2022 11:36 AM SW

**Witness this:**



Seal of Court

**Clerk of the County:**

*Candice Adams*

**This *Summons* must be served within 30 days of the witness date.**

Date of Service:

*(Date to be entered by an officer or process server on the copy of this *Summons* left with the Defendant or other person.)*

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT  DuPage COUNTY		PROOF OF SERVICE OF SUMMONS AND COMPLAINT/PETITION	For Court Use Only
<b>Instructions</b> Enter above the county name where the case was filed. Enter your name as Plaintiff/Petitioner. Enter the names of all people you are suing as Defendants/ Respondents. Enter the Case Number given by the Circuit Clerk.		BRADLEY BENES, individually, and on behalf of all others <b>Plaintiff / Petitioner (First, middle, last name)</b>  V.  CENLAR FSB <b>Defendant / Respondent (First, middle, last name)</b>  <input type="checkbox"/> <b>Alias Summons</b> (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)	
			2022MR000267 <b>Case Number</b>

**\*\*Stop. Do not complete the form. The sheriff or special process server will fill in the form.\*\***

My name is \_\_\_\_\_ and I state  
*First, Middle, Last*

I served the **Summons and Complaint/Petition on the Defendant/Respondent**  
*First, Middle, Last* as follows:

Personally on the Defendant/Respondent:  
 Male  Female  Non-Binary  Approx. Age: \_\_\_\_\_ Race: \_\_\_\_\_  
 On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.  
 Address, Unit#: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_

On someone else at the Defendant/Respondent's home who is at least 13 years old and is a family member or lives there:  
 On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.

Address, Unit#: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_  
 And left it with: \_\_\_\_\_  
*First, Middle, Last*

Male  Female  Non-Binary  Approx. Age: \_\_\_\_\_ Race: \_\_\_\_\_  
 and by sending a copy to this defendant in a postage-paid, sealed envelope to the above address on \_\_\_\_\_, 20 \_\_\_\_\_.  
 On the Corporation's agent, \_\_\_\_\_

*First, Middle, Last*  
 Male  Female  Non-Binary  Approx. Age: \_\_\_\_\_ Race: \_\_\_\_\_  
 On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.  
 Address: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_

Enter the Case Number given by the Circuit Clerk: 2022MR000267

 I was not able to serve the **Summons** and Complaint/Petition on Defendant/Respondent:

First, Middle, Last

I made the following attempts to serve the **Summons** and Complaint/Petition on the Defendant/Respondent:1. On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Other information about service attempt: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_2. On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Other information about service attempt: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_3. On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Other information about service attempt: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DO NOT** complete this section. The sheriff or private process server will complete it.

**If you are a special process server, sheriff outside Illinois, or licensed private detective, your signature certifies that everything on the *Proof of Service of Summons* is true and correct to the best of your knowledge. You understand that making a false statement on this form could be perjury.**

By:

**FEES**

Signature by:	<input type="checkbox"/> Sheriff	Service and Return: \$ _____
	<input type="checkbox"/> Sheriff outside Illinois:	Miles \$ _____
		Total \$ 0.00

*County and State*

Special process server  
 Licensed private detective

Print Name \_\_\_\_\_

If **Summons** is served by licensed private detective or private detective agency:

License Number: \_\_\_\_\_

**IN THE CIRCUIT COURT OF ILLINOIS  
FOR THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

BRADLEY BENES, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

CENLAR FSB,

Defendant.

Candice Adams  
e-filed in the 18th Judicial Circuit Court  
DuPage County  
ENVELOPE: 17743771  
2022MR000267  
FILEDATE: 5/3/2022 12:27 PM  
Date Submitted: 5/3/2022 12:27 PM  
Date Accepted: 5/4/2022 8:18 AM  
CK

Case No.

**2022MR000267**

**CLASS ACTION COMPLAINT**

**NOW COMES** BRADLEY BENES, individually, and on behalf of all others similarly situated, by and through his undersigned counsel, complaining of CENLAR FSB, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this class action seeking redress for Defendant's violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*

**JURISDICTION AND VENUE**

2. This Court has personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant transacts business within Illinois.

3. Venue is proper in DuPage County, Illinois pursuant to 735 ILCS 5/2-101 as the transactions that give rise to Plaintiff's claims occurred in this judicial district.

**PARTIES**

4. BRADLEY BENES ("Plaintiff") is a natural person, who at all times relevant resided in this judicial district.

5. CENLAR FSB (“Defendant”) is a national mortgage servicer that services thousands of mortgage loans nationwide. Through the course of servicing mortgage loans, Defendant is in constant contact with consumers regarding the statuses of their mortgage loans. In light of the nature of Defendant’s relationship with borrowers, it is imperative that Defendant provide truthful information to borrowers.

6. Defendant regularly conducts business in the State of Illinois by servicing mortgage loans that are secured by properties located in Illinois.

#### **FACTUAL ALLEGATIONS**

7. On November 1, 2006, Plaintiff executed a mortgage loan (“Loan”) in the amount of \$41,800.00 in favor of Home Loan Center Inc. d/b/a Lending Tree Loans.

8. The Loan is secured by a mortgage (“Mortgage”) encumbering Plaintiff’s property located at 50 N. Bokelman Street, Apartment 235, Roselle, Illinois 60172 (“subject property”).

9. At some point after Plaintiff purchased the subject property, CitiMortgage acquired servicing rights for the Loan.

10. On March 6, 2019, Plaintiff initiated a Chapter 13 bankruptcy case in the United States Bankruptcy Court for the Northern District of Illinois, Case No. 19-05978.

11. On April 24, 2019, Plaintiff filed an Amended Chapter 13 Plan.

12. Plaintiff’s Amended Chapter 13 Plan proposed to surrender the subject property to CitiMortgage and Wells Fargo Home Mortgage in full satisfaction of their secured claims.

13. On June 7, 2019, the Bankruptcy Court confirmed Plaintiff’s Amended Chapter 13 Plan (“Confirmed Plan”), therefore binding CitiMortgage and its successors to the terms of the Amended Chapter 13 Plan

14. Plaintiff performed all of his obligations as set forth in his Confirmed Plan.

15. Accordingly, on January 2, 2020, the Bankruptcy Court entered an Order of Discharge pursuant to 11 U.S.C. §1328(a).

16. Plaintiff's bankruptcy discharge extinguished his personal liability on the Loan. *See* 11 U.S.C. §1328(a) and §524.

17. At some point in time after Plaintiff's bankruptcy discharge, Defendant acquired servicing rights to the Loan.

18. Defendant received notice of Plaintiff's bankruptcy discharge from its predecessor CitiMortgage during the loan onboarding process.

19. On March 1, 2022, Defendant sent Plaintiff a mortgage statement attempting to collect the Loan from Plaintiff personally.

20. The mortgage statement stated, in pertinent part: (1) "As of 11/01/18 you are 1216 days delinquent on your mortgage loan"; (2) "You are late on your mortgage payments"; (3) "**Amount Due: \$16,059.53**"; and (4) "**You must pay this amount to bring your loan current.**"

*See attached Exhibit A. (emphasis in original)*

21. The mortgage statement further included a payment coupon. *Id.*

22. The mortgage statement was sent to Plaintiff's residence located at 122 Dickinson Drive, Wheaton, IL 60189 (not the subject property"). *Id.*

23. Plaintiff suffered from emotional distress as a result of Defendant's deceptive attempt to collect the Loan from Plaintiff personally as Plaintiff was misled into believing that his bankruptcy discharge had no legal effect and that he was still personally liable on the Loan.

#### CLASS ALLEGATIONS

24. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

25. Plaintiff brings this action pursuant to and Fed. R. Civ. P. 23, individually, and on behalf of all others similarly situated ("Putative Class").

26. The Putative Class is defined as follows:

All individuals residing in the State of Illinois (a) who received a written correspondence from Defendant; (b) within the one (1) year prior to the filing of the original complaint and during its pendency; (c) the same as or substantially similar to the mortgage statement attached hereto as Exhibit A; (d) attempting to collect a mortgage loan that was in default when Defendant began servicing it; (e) that was discharged in a Chapter 7 or Chapter 13 bankruptcy proceeding pursuant to 11 U.S.C. §§727 or 1328(a).

27. The following individuals are excluded from the Putative Class: (1) any Judge or presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) individuals who properly execute and file a timely request for exclusion from the Putative Class; (5) the legal representatives, successors or assigns of any such excluded individuals; and (6) individuals whose claims against Defendant have been fully and finally adjudicated and/or released.

**A. Numerosity**

28. The exact number of members of the Putative Class are unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable.

29. Upon information and belief, Defendant services mortgages for thousands of consumers who fall into the definitions of the Putative Class.

30. Members of the Putative Class can be objectively identified from records of Defendant to be gained in discovery.

**B. Commonality and Predominance**

31. There are many questions of law and fact common to the claims of Plaintiff and the Putative Class and those questions predominate over any questions that may affect individual members of the Putative Class.

**C. Typicality**

32. Plaintiff's claims are typical of members of the Putative Class because Plaintiff and members of the Putative Class are entitled to damages as result of Defendant's conduct.

**D. Superiority and Manageability**

33. This case is also appropriate for class certification as class proceedings are superior to all other available methods for the efficient and fair adjudication of this controversy.

34. The damages suffered by the individual members of the Putative Class will likely be relatively small, especially given the burden and expense required for individual prosecution.

35. By contrast, a class action provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

36. Economies of effort, expense, and time will be fostered and uniformity of decisions ensured.

**E. Adequate Representation**

37. Plaintiff will adequately and fairly represent and protect the interests of the Putative Class.

38. Plaintiff has no interests antagonistic to those of the Putative Class and Defendant has no defenses unique to Plaintiff.

39. Plaintiff has retained competent and experienced counsel in consumer class action litigation.

**CLAIMS FOR RELIEF**

**COUNT I:**

**Violations of the Fair Debt Collection Practices Act (15 U.S.C. §§ 1692 *et seq.*)  
(On behalf of Plaintiff and the Members of Putative Class)**

40. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

41. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) as he is a natural person obligated or allegedly obligated to pay a debt.

42. The Loan is a "debt" as defined by 15 U.S.C. § 1692a(5) because it was incurred for personal, family, or household purposes.

43. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6) because (1) it uses instrumentalities of interstate commerce and the mail in its business; and (2) it regularly collects debts owed or due or asserted to be owed or due another.

44. Pursuant to 11 U.S.C. § 524(a)(2), a discharge order operates as an injunction against acts to collect debts discharged in bankruptcy. *See* 11 U.S.C. §524(a)(2).

45. A demand for immediate payment of a discharged debt is "false" in the sense that it asserts that money is owed when in reality it is not owed by virtue of the discharge injunction. *Randolph v. IMBS, Inc.*, 368 F.3d 726, 728 (7th Cir. 2004).

**a. Violations of 15 U.S.C. §1692e**

46. Section 1692e of the FDCPA provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section.

(2) The false representation of –

- (A) the character, amount, or legal status of any debt.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

47. Defendant violated §1692e of the FDCPA by making false representations in its attempts to collect the Loan.

48. Specifically, Defendant violated §§1692e and e(2)(A) of the FDCPA by misrepresenting the character, amount, or legal status of the Loan as no payments were due on the Loan from Plaintiff personally at the time Defendant made its payment demand.

49. Defendant violated §1692e(10) of the FDCPA by falsely representing that the Loan was collectible from Plaintiff personally at the time of the demand for payment when in fact the Loan was not collectible against Plaintiff personally by virtue of the bankruptcy discharge injunction.

**b. Violations of 15 U.S.C. § 1692f**

50. Section 1692f of the FDCPA provides:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

51. Defendant violated §§1692f and f(1) by attempting to collect an amount not permitted by law. Specifically, the bankruptcy discharge injunction prohibited Defendant from attempting to collect on the Loan from Plaintiff personally. *See 11 U.S.C. §524.*

**WHEREFORE**, Plaintiff, on behalf of himself and members of the Putative Class, requests the following relief:

- a. an order granting certification of the Putative Class, including the designation of Plaintiff as the named representative, and the appointment of the undersigned as Class Counsel;
- b. an order enjoining Defendant from attempting to collect discharged mortgage loans from Plaintiff and the Putative Class;
- c. an award of statutory damages in the amount of \$1,000 to Plaintiff and members of the Putative Class;
- d. an award of actual damages to Plaintiff and members of the Putative Class;
- e. an award of Plaintiff's reasonable attorney's fees and costs; and
- f. any further relief as this Honorable Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself and the members of the Putative Class, demands a trial by jury.

Dated: April 29, 2022

Respectfully Submitted,

**BRADLEY BENES**

By: /s/ Mohammed O. Badwan  
Mohammed O. Badwan  
Illinois Bar No. 6299011  
Sulaiman Law Group, Ltd.  
Lombard, IL 60148  
Phone (630) 575-8180  
Fax: (630) 575- 8188  
mbadwan@sulaimanlaw.com  
*Counsel for Plaintiff*

Attorney #224408 CLK

10/30/2018 10:45:40 AM

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Document / 3rd  
Book Chapter  
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Robert G. Smale, Ph.D.

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